IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD L. PIPKINS, Attorney at Law, Appellant	)	No. 20280
vs.	)	
THE STATE BAR OF NEVADA,	)	FILED
	)	APRIL 28, 1995
Respondent.	)	

ORDER GRANTING REHEARING
AND MODIFYING DISCIPLINE

On May 28, 1993, this court suspended attorney Richard L. Pipkins from the practice of law in this state for a period of not less than five years. The court further ordered that, prior to seeking reinstatement, Pipkins would be required to pass the Nevada State Bar Examination and the Multistate Professional Responsibility Examination. Thereafter, Pipkins petitioned the United States Supreme Court for a writ of certiorari. The United States Supreme Court denied Pipkins' petition for a writ of certiorari and, on January 10, 1994, the United States Supreme Court denied Pipkins' petition for rehearing.

On June 23, 1994, Pipkins filed in this court a petition for reconsideration of our order of May 28, 1993. Although Pipkins' petition for reconsideration is untimely, see NRAP 40 (a), and dilatory, we have elected to consider it. Pipkins contends that the discipline imposed by this court was too harsh.1 Having review the record and the pleadings, we conclude that the discipline previously imposed by this court should be modified.

Accordingly, we grant Pipkins' petition for rehearing and we modify our previously imposed discipline. . . .

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1 We have considered Pipkins other contentions on rehearing, and we conclude that they lack merit. [Emphasis added.]

Pipkins shall be suspended from the practice of in this state for a period of not less than three years from the date of our previous order of suspension, May 28, 1993. Prior to seeking reinstatement pursuant to SCR 116, Pipkins will still be required to pass the Nevada State Bar Examination and the Multistate Professional Responsibility Examination.

It is so ordered.2

/s/ Steffen, C.J.
Steffen

/s/ Young, J.
Young

/s/ Springer, J.
Springer

/s/ Rose, J.
Rose

cc: Steven Wolfson, Chairman,
Southern Nevada Disciplinary Board
C.A. Olendorff, Bar Counsel
Rosalie Small, Executive Director
Robison, Belaustegui, Robb & Sharp
Denton & Denton
Richard L. Pipkins

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2 We deny appellant's motion for oral argument.

The Honorable Miriam Shearing, Justice, did not participate in the decision of this appeal.

AFFIDAVIT OF JUDGE JOSEPH PAVLIKOWSKI

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Joseph Pavlikowski, being first duly sworn, deposes and says as follows:

1. That your Affiant is a duly elected District Court Judge in Clark County, Nevada, is over the age of eighteen (18), is competent to testify to the matters stated therein, and herein testifies based upon personal knowledge.

2. That on August 15, 1988, "Plaintiff's Motion For Release of Funds" in the case of Mariam Litowsky, et. al., vs. Julius Mandler, et.al., case number A267011, came before the Affiant for consideration.

3. That present in the court file at that time was plaintiff's complaint and plaintiff's motion, but no answer to plaintiff's complaint and no opposition to plaintiff's motion, as well as no evidence of the service of either the complaint or the motion upon the defendants.

4. That prior the start of that morning's motion calendar at 9:00 A.M., Attorney Richard L. Pipkins indicated to

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the Affiant's staff that he would be delayed in another department, and that Attorney Pipkins made no appearance in open court that morning prior to the completion of the court's calendar.

5. That what with no attorney appearing for either the plaintiff nor the defendant, and there being no evidence of service of process upon the defendant of either the complaint or the motion, the Affiant in open court ordered this matter taken off calendar.

6. That following completion of the court's morning motion calendar Attorney Pipkins arrived at the court and was brought to the chambers of the Affiant whereupon Attorney Pipkins was advised in chambers of the fact that the Affiant had taken the matter off calendar. Nothing said in chambers by Attorney Pipkins had any effect on the court's prior ruling that the matter should be taken off calendar.

7. That the Affiant has not raised any objection as to Attorney Pipkins' handling of this matter, nor has the Affiant in any way sanctioned Attorney Pipkins or complained to the State Bar of Nevada about this matter. [Emphasis added.]

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8. That attached hereto is a copy of the Court's minutes relative to this matter.

Further Affiant sayeth not.

/s/ Joseph Pavlikowski
JOSEPH PAVLIKOWSKI

On this 10th day of June 1994, before me, the undersigned, a Notary Public in and for the County of Clark, State of Nevada, duly commissioned and sworn, personally appeared JOSEPH PAVLIKOWSKI, known to be the person whose name is subscribed to the above instrument, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

/s/ June Montano
NOTARY PUBLIC

NOTARY SEAL

AFFIDAVIT OF KENNETH PHILLIPS

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Kenneth Phillips, being first duly sworn, deposes and says as follows:

1. That your Affiant is over the age of eighteen (18), is competent to testify as to these matters, and herein testifies based upon personal knowledge;

2. That on July 29, 1988, Affiant was retained by the law office of attorney Richard L. Pipkins for the specific purpose of affecting service of process of a summons and civil complaint entitled Mariam Litowsky and Richard Litowsky vs. Julius Mandler and Carmella Mandler, et.al., case number A267011, upon Defendants Julius Mandler and Carmella Mandler;

3. That on July 29, 1988, attorney Pipkins provided Affiant with an original summons together with a copy thereof and a copy of the complaint in this matter, and that during the period between July 29, 1988, and August 11, 1988, Affiant made numerous efforts to locate and serve Defendants Julius Mandler and Carmella Mandler, all of which proved unsuccessful;

4. That on August 11, 1988, attorney Pipkins provided

Affiant with two copies of "Plaintiff's Motion For Release of Funds" and that during the period August 11, 1988, up to and including August 14, 1988, Affiant made numerous efforts to locate and serve Defendants Julius Mandler and Carmella Mandler with the aforementioned Complaint and "Plaintiff's Motion For Release of Funds", all of which also proved unsuccessful;

5. That on August 15, 1988, attorney Pipkins provided Affiant with an additional original summons and one copy thereof, the first summons having been lost by Affiant during previous attempts at service, and that on August 16, 1988, Affiant was able to affect service of process upon Julius Mandler and Carmella Mandler of the aforementioned Complaint and "Plaintiff's Motion For Release of Funds", and on August 17, 1988, signed the attached "Affidavit of Service" for filing with the Eighth Judicial District Court;

6. That at the time the Affiant served the Defendants, Julius Mandler stated to Affiant that Julius Mandler and Carmella Mandler had just returned the previous day from an extended vacation out of the country lasting several weeks and thus it would have been nearly impossible to have affected service

of process upon them any earlier than was done;

7. That the Affiant has never previous to this date been interviewed by attorney Pipkins' counsel;

Further Affiant sayeth not.

/s/ Kenneth Phillips
KENNETH PHILLIPS

On this 24th day of May 1994, before me, the undersigned, a Notary Public in and for the County of Clark, State of Nevada, duly commissioned and sworn, personally appeared KENNETH PHILLIPS, known to be the person whose name is subscribed to the above instrument, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

/s/ Yvonne M. Guthrie
NOTARY PUBLIC

August 24, 1988

Julius Mandler
P. O. Box 13319
Las Vegas, NV 89112

Re: Richard Litowsky

Dear Julius:

Contrary to my advice, you have expressed a desire to litigate to the end with Mr. and Mrs. Litowsky. You apparently chose to do this as a matter of principle.

You desire for this office to represent you, however, you are in effect asking us to extend credit to you for the purpose of vindicating your principles. I am sorry to advise you that we are not in a position to do that. I simply do not feel as strongly about this matter as you do and I don't have any principles involved. We have ongoing expenses in this office and we simply cannot finance your litigation and allow you to pay us over a period of time.

Accordingly this office will not be able to represent you. We would appreciate your picking up the papers which were served on you.

Yours very truly,

JOHN P. WANDERER

The Law Offices Of
RICHARD L. PIPKINS, CHTD.
A Professional Corporation
700 South 4th Street
Las Vegas, Nevada 89101
(702) 386-6004

August 19, 1988
HAND DELIVERED

Mr. Harry E. "Chip" Hinderliter
Vice President & General Counsel
First Interstate Bank of Nevada
3800 Howard Hughes Plaza
Las Vegas, Nevada 89101

Re: Funds held by FIB on behalf of "La Cornucopia"
Pending litigation: Litowsky vs. Mandler
Case Number: A 267011

Dear Chip:

I have a matter that I would like to present to you for your consideration and review. The specific facts are set forth in the attached materials, but suffice to say that my clients, Richard and Miriam Litowsky were once in a partnership with the Defendants, Julius and Carmella Mandler when, about two years ago, the Mandlers took off with all of the proceeds of the business and have, my clients have alleged, converted the proceeds to personal use. The one asset that they missed was approximately $4,000.00 sitting in a business checking account at FIB, Main and Oakey.

I am informed that this account was once a one signature account with either my clients or the Mandlers being authorized signers, but that due to the split between the Litowskys and the Mandlers, the account was "flagged" and now requires both the signature of Mrs. Litowsky and Mr. Mandler. The current problem is that Mr. Litowsky is very ill, needs ongoing medical treatment that he presently does not the ability to pay for, and therefore my clients would again like one signature access to the account. Absent this being possible, I would suggest that the funds be placed with Loretta Bowman's office so the appropriate court, in either this action or in a separate Interpleader action, can adjudicate who the proper owner of this money is.

I much appreciate your attention to this matter. Since I am sure you are much more experienced than I am in matters such

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as these I would much appreciate any input you might have in respect to this problem. However, in light of the severity of Mr. Litowsky's illnesa, I would request that we reach some sort of solution to this problem in as timely a manner as possible.

Thank you very much for your attention to this matter.

Very Truly Yours,

RICHARD L. PIPKINS, CHTD.

by: /s/ Richard L. Pipkins
RICHARD L. PIPKINS, ESQ.
Attorney & Counselor At Law

enclosure: 1) Summons & Complaint
2) Motion For Release of Funds

INDEMNITY AGREEMENT

WHEREAS there currently exists a commercial checking account at First Interstate Bank of Nevada (hereinafter "FIB") under account number 0880030734, as maintained at First Interstate Bank, Main and Oakey Office, Las Vegas, Clark County, Nevada and the owner of that account being listed as "La Cornucopia"; and

WHEREAS "La Cornucopia" was originally established as a partnership in April of 1986 as by and between MARIAM LITOWSKY (hereinafter "LITOWSKY") and JULIUS MANDLER (hereinafter "MANDLER") for the purpose of operating a retail furniture business; and

WHEREAS the establishment known as "La Cornucopia" ceased to exist on or about August 1, 1988, when MANDLER, it is being alleged by LITOWSKY,[Emphasis added.] took all of the proceeds of "La Cornucopia" without the permission of LITOWSKY, and thereafter disappeared; and

WHEREAS the time period of two (2) years has since passed since there has been any significant activity in respect to FIB account number 0880030734, and since there still remains some four thousand nine hundred and seventy-one dollars and sixty-three cents ($4,971.63) remaining in said account; and

WHEREAS LITOWSKY is desirous of withdrawing all of the remaining amounts in this account, and FIB's only principal concern with this request being that of any legal duty as owed to MANDLER by FIB and LITOWSKY in respect to these funds; and

IT IS HEREBY AGREED BY AND BETWEEN FIB AND LITOWSKY that said funds, that being some four thousand nine hundred and seventy-one dollars and sixty-three cents ($4,971.63) remaining in said account number 0880030734 as maintained at First Interstate Bank, Main and Oakey Office, Las Vegas, Clark County, Nevada may be withdrawn by LITOWSKY on the condition, as herein agreed, that LITOWSKY indemnify FIB fully in respect and in direct portion to the amount being withdrawn FIB from any action by MANDLER in respect to these funds as against FIB.

LITOWSKY hereby agrees that in the event that any action is instituted by MANDLER as against FIB in respect to these funds that LITOWSKY will stand in the place of FIB, will

/s/ ML
ML

/s/ SBB
SBB

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defend as against any such action on behalf of FIB, and will indemnify FIB in respect to both the amount of the funds currently held by FIB and in respect to any litigation costs incurred by FIB.

THIS AGREEMENT entered into this nineteenth day of August 1988 at Clark County, Nevada.

On behalf of MARIAM LITOWSKY

/s/ Miriam Litowsky
MARIAM LITOWSKY

On behalf of FIB

/s/ Sara Beth Brown
SARA BETH BROWN

NOTARIZATION AS TO MARIAM LITOWSKY

On this 19th day of August, 1988, before me, the undersigned, a Notary Public in and for the County of Clark, State of Nevada, duly commissioned and sworn, personally appeared MARIAM LITOWSKY, known to be the person whose name is subscribed to the above instrument, and who acknowledged to me that she executed the same freely and voluntarily and for the uses and purposes therein mentioned.

[Notary Seal]

/s/ Richard L. Pipkins
NOTARY PUBLIC

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD L. PIPKINS, Attorney at Law, Appellant vs. THE STATE BAR OF NEVADA, Respondent.	)	No. 19449
RICHARD L. PIPKINS, Attorney at Law, Appellant vs. THE STATE BAR OF NEVADA, Respondent.	)	No. 20280 FILED May 28, 1993

ORDER OF SUSPENSION

This is an automatic, consolidated appeal from the findings and recommendations of separate hearing panels of the Southern Nevada Disciplinary Board. See SCR 105(3)(b). On June 27, 1990, following oral argument of these matters, this court remanded the proceedings in Docket No. 20280 for a full adversarial rehearing before a new hearing panel of the Southern Nevada Disciplinary Board. We deferred any final decision in docket No. 19449 pending our receipt and consideration of the panel's findings and recommendations on rehearing.

The board has now filed the record of the proceedings on rehearing with the clerk of this court, and the matter has been fully briefed by the parties.1 In both pending matters the disciplinary panels have recommended, in part, that attorney Richard L. Pipkins be suspended from the practice of law in this state for a period of not less than five years.

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Pipkins first contends that no evidence supports the panel's findings of misconduct. Our independent review of the record, however reveals that the panel's findings are supported by substantial clear and convincing evidence. Specifically, we note that Pipkins' testimony regarding the events in question was directly contradicted by the testimony of the other witnesses, and we concur with the panel's findings that Pipkins was less than truthful under oath.

Pipkins next contends that the panel selection procedures set forth in the Supreme Court Rules create a constitutionally unacceptable potential for biased decision-making. See SCR 103(8); SCR 105(2)(a); In re Ross, 99 Nev. 1, 656 P.2d 832 (1983). We disagree. The flexible demands of due process of law do not require a trial by randomly selected jury in attorney discipline proceedings. See In re Rhodes, 370 F.2d 411 (8th Cir.) (court rejected claim that denial of a trial by jury in federal disbarment proceedings was a violation of due process of law). cert. denied, 386 U.S. 999 (1967).

Moreover, the rules governing discipline proceedings allow an accused attorney and bar counsel two peremptory challenges each. The rules also contemplate additional challenges for cause. See SCR 105(2)(a) ("[t]he chairman may make ad hoc appointments to replace either the layman or attorneys . . . in the event challenges or disqualification reduce the number to less than the five required for a hearing panel"). See also SCR 103(8) (panel members shall not participate in any matter where a judge similarly situated would be required to abstain). Our review of the record reveals that these provisions provided Pipkins a full and fair opportunity to challenge in a timely manner the participation in the proceedings of the Chairman of the Southern Nevada Disciplinary Board and all individuals selected by the Chairman to sit on the disciplinary panel.

We further conclude that Pipkins had more than adequate notice of the proceeding and a full and fair opportunity to present his defense. Contrary to his contentions, the record reveals that Pipkins was not denied the right to meaningful discovery; nor did any evidentiary rulings of the panel chairman deprive Pipkins of

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an opportunity to present a meaningful defense. Due process of law does not require more. See Selling v. Radford, 243 U.S. 46 (1916). See also Burleigh v. State Bar of Nevada, 98 Nev. 140, 643 P.2d 1201 (1982) (proceedings before disciplinary panel not charged with executive responsibilities relating to state bar's budget held not to offend due process).

Pipkins further failed to demonstrate affirmatively on appeal any actual bias on the part of the former Chairman of the Southern Nevada Disciplinary Board or on the part of any particular panel member assigned to hear the case on rehearing. See In re Miller, 87 Nev. 65, 482 P.2d 326 (1971) (on appeal, an attorney must affirmatively reveal where the board's findings and recommendations are erroneous or unlawful). Nor has Pipkins demonstrated on appeal that the Board Chairman erred in either refusing to disqualify himself, or in denying Pipkins' belated motion, filed on the day of the scheduled hearing, to disqualify an ad hoc replacement to the panel. See Ainsworth v. Combined Ins. Co., 105 Nev. 237, 774 P.2d 1003, cert. denied, 493 U.S. 958 (1989); In re Petition to Recall Dunleavy, 104 Nev. 784, 769 P.2d 1271 (1988); Goldman v. Bryan, 104 Nev. 644, 764 P.2d 1296 (1988). We also reject as wholly unsubstantiated Pipkins' allegations that he has been the victim of a dishonest or corrupt prosecution at the hands of former bar counsel or the special prosecutor.

Accordingly, we adopt and approve the findings and recommendations of the panel. Richard L. Pipkins is hereby suspended from the practice of law in this state for a period of not less than five years. Prior to seeking reinstatement pursuant to SCR 116, Pipkins shall be required to pass the Nevada State Bar Examination and the Multistate Professional Responsibility Examination. Pipkins' reinstatement may be conditioned upon his reimbursement of any losses incurred by the parties as a result of the actions that are the subject of this proceeding. The costs of the disciplinary proceedings are assessed against Pipkins, and the parties shall comply with the notice provisions of SCR 115.

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Docket No. 19449.

We conclude that the discipline imposed in Docket No. 20280 adequately serves the paramount objectives of bar disciplinary proceedings to protect the public against attorneys unfit to serve as officers of the court. See State Bar of Nevada v. Claiborne, 104 Nev. 115, 756 P.2d 464 (1988). Accordingly, we decline to impose the additional discipline recommended in this proceeding.

It is so ORDERED.2

/s/ Rose, C.J.
Rose

/s/ Steffen, J.
Steffen

/s/ Young, J.
Young

/s/ Springer, J.
Springer

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1 On June 29, 1992, we ordered the appeal submitted for decision on the opening and answering briefs without further argument. On April 8, 1993, Pipkins moved this court to file and consider a long overdue reply brief. Cause appearing, we grant the motion. We have considered Pipkins' reply brief in resolving the appeal, and we direct the clerk of this court to file the reply brief provisionally submitted on April 8, 1992.

2 The Honorable Miriam Shearing, Justice, did not participate in the decision of these matters.